SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1854

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No._____

ROBERT DUVAL ROGERS,
Petitioner,

versus

MRS. MINNIE CORNELIA ROGERS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Petitioner Robert Duval Rogers respectfully requests that writ of certiorari issue to review the judgment and opinion of the Supreme Court of Mississippi entered in this case on the 18th day of February, 1974.

OPINION BELOW

The opinion of the Supreme Court of Mississippi (Appendix A).

JURISDICTION

The Supreme Court of Mississippi entered judgment, February 18, 1974 (Appendix B), affirming the decree of the Chancery Court of Scott County, Mississippi (Appendix C), and denied his timely petition for rehearing, March 18, 1974 (Appendix CC). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTION PRESENTED

1. Should the State of Mississippi give recognition to a divorce decree rendered in the State of Alabama, when both parties were residents of the State of Alabama?

2. Does the equal protection clause of the Fourteenth Amendment give the right to collaterally attack a valid judgment of a sister State?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Article Four—Section One

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may be general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effects thereof".

Fourteenth Amendment

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

Petitioner and Respondent were married on September 18, 1927 and they lived together as man and wife in Mississippi until 1965 wherein they moved to the State of Alabama. The Petitioner filed a divorce petition in Alabama on July 23, 1971 (Appendix D) (R41-45). Respondent filed a waiver of process on July 23, 1971 (R 46) (Appendix E) and said date the Circuit Court in Equity of Baldwin County, State of Alabama, granted unto Petitioner a valid and legal divorce (R. 51) (Appendix F). The Respondent stated that she was competent to execute the waiver of process (Appendix E), and Respondent has never been adjudgd by any court to be a non compos mentis.

Both parties continued to live in Alabama and on or about January 6, 1972 Respondent moved to the State of Mississippi. On or about the 4th day of February, 1972 one of her sons had himself appointed as conservator of Respondent and on the 16th day of February, 1972 suit was filed in the Chancery Court of Scott County, Mississippi seeking separate maintenance from Petitioner (R. 5) and got a process by attachment on mineral interest that the Petitioner owned in Scott County, Mississippi.

Petitioner came into court, filed a demurrer to the bill of complaint (R. 15) and the court overruled said demurrer. The Petitioner filed his answer and set up affirmative defenses that the Chancery Court of Scott County, Mississippi did not have jurisdiction to try said cause in that the Circuit Court in Equity of Baldwin County, Alabama, had the original jurisdiction of the divorce proceedings and that said court still had jurisdiction of any proceedings in that both parties were resident citizens of the State of Alabama at the time of the divorce decree (R. 51). Another defense set up by the Petitioner was that the Chancery Court of Scott County, Mississippi should give the divorce decree of the Circuit Court in Equity of Baldwin County, Alabama full faith and credit under the Constitution of the United States. Paragraph Four of his answer states:

> "That the full faith and credit of the Circuit Court in Equity of Baldwin County of the State of Alabama should be upheld by the Court of the State of Mississippi in that he obtained a valid and legal divorce in the said Court in Alabama and that relying on said full faith and credit being recognized, he entered into a marriage contract with Cile Merker on 1-7-72, and that he and and his wife are now residing at Box 43, Spanish Main, Spanish Fort, Alabama". (R. 19).

The Respondent was allowed to amend her complaint two times prior to the trial of the case. After Respondent had put on all her witnesses, she moved the court to allow an amendment to the pleadings to conform to the truth by being more specifically set out that a fraud was perpetuated on Respondent and the court on production of presentation of the waiver of process (R. 161). The Petitioner then promptly objected to the amendment in that it made out an entirely new and different case (R. 196 - 197). Petitioner being caught by surprise and being unprepared to answer

the allegation of fraud, offered no witnesses and rested. The court entered a final decree which found that the final decree of the Circuit Court in Equity of Baldwin County, Alabama was not entitled to the full faith and credit laws of the Constitution of the United States of America.

Respondent, prior to the signing of the waiver of process, has never been adjudicated a non compos mentis, nor had she ever been treated by any medical doctor or medical facility for any type of mental disease or disorder.

ARGUMENT

1. The Court Below Has Disregarded the Controlling Decisions of This Court

This Court held in the case of *Cook v. Cook*, 342 U. S. 126, 96 Led 146 72 S. Ct. 157 as follows:

> "A Spouse who appears in a divorce proceeding and either admits or contests the issue of the plaintiff's domicile, or who is personally served in the divorce state, is barred from attacking the decree collaterally in a sister state; and so is a stranger to the divorce proceedings, such as a second spouse, unless the divorce state applies a less strict rule of res judicata to the stranger than to the parties."

In the case of *Haddock v. Haddock*, 201 U. S. 562, 50 L. Ed. 867 26 S. Ct. 525, the Supreme Court held that:

> "It is no longer open to question that where husband and wife are domiciled in a state there exists jurisdiction in such state, for good cause a decree of divorce which will be entitled to enforcement in another state by virtue of the full faith and credit clause."

In the case of *Scott v. United States,* (CA5) 190 F. 2d 134 the court held:

> "The mere mental incompetence of a person does not preclude a court from acquiring jurisdiction over his person nor deprive court of power to adjudicate his property rights, and lack of proper representation of a mental incompetent does not itself render a judgment against him void, but such judgment is merely voidable and is good until set aside on direct attack, and even then the judgment will not be set aside unless in addition to insanity and lack of representation a meritorious defense is prima facie shown."

In the case of *Atherton vs. Atherton,* 181 U. S. 155, 45 L. Ed. 794, 21 S. Ct. 544 held that:

> "Where a court having jurisdiction to do so grants a divorce which is valid within the jurisdiction, it is regarded as valid in every other jurisdiction."

OTHER CASES

The question arises as to what gives a court jurisdiction was answered in the case of *Anglin v. Anglin,* 51 So. 2d 781, 211 Miss 405, when the court said:

"Jurisdiction of Florida court to grant a divorce depended upon the fact of actual bona fide domicile of complainant in the state."

The divorce as granted by the Circuit Court in Equity of Baldwin County, Alabama is at the most a voidable judgment and a voidable judgment is good until it is superseded, reversed or vacated as set out in 46 Am. Jur. 2d, Sec. 48:

> "A judgment which is voidable merely is not a nullity. Until superseded, reversed, or vacated it is good in law, is binding everywhere, and has all ordinary attributes

> and consequences of a valid judgment. It constitutes sufficient justification of all acts done in its enforcement, and affords complete protection to one who acts in reliance upon the adjudication."

The Mississippi Supreme Court in ruling on the question whether or not a collateral attack could be made on an original judgment, in the case of *Reid vs. General Motors Acceptance Corp.*, 87 So. 2d 95, 228 Miss 121, stated:

> "The attack thus made on the original judgment is a collateral one. Unless the judgment is void it is not subject to a collateral attack."

In determining whether the Alabama court had jurisdiction to grant the parties a divorce, the Mississippi Supreme Court stated in the case of *Duvall v. Duvall*, 80 So. 2d 752, 224 Miss 546:

> "The test of jurisdiction is the power to act not, the correctness of its decision."

And it further said:

> "The test of jurisdiction is whether the court has right to enter on the inquiry, and not whether its methods are regular, its findings right, or its conclusions according to law."

The Petitioner in the case at bar was not allowed to answer the amended bill and was put to trial without filing a plea, answer or demurrer even though he requested the trial court to allow him to do so. (R. 196-197)

61 Am. Jur. 2d, Sec. 331, states as follows:

> The right of the defendant to answer an amended pleading is one of which he cannot be deprived, even after entry of a default against him on the original pleading,

for where a plaintiff amends in matter of substance, he, in effect, opens the default on the original pleading.

In accordance with the general rule that error in rulings on amendments is ground for reversal only when prejudicial, it has been held that failing to give opposite party time to meet an amended pleading is prejudicial error."

A defendant is not only allowed to file pleadings to an amended declaration of bill, but he is also allowed to prepare his case for trial and it is error to refuse to allow him to do so. In the case of *Vicksburg, S. & P. R. Co. v. Stocking,* 10 So. 480, Mississippi Supreme Court said that:

"Where plaintiff in an action against a carrier for the death of two horses, and for injuries sustained by other horses, testifies to the death of ten horses within two weeks after their delivery to him, and upon moves for leave to amend his declaration to make it conform to his evidence, which motion is allowed, it is error for the court to refuse defendant a continuance on the ground that it is unprepared to meet the new case thus presented."

Our court again in the case of *Philley v. Toler,* 95 So. 2d 783, 231 Miss. 512, stated as follows:

"In action on open account, wherein trial court properly permitted plaintiff to amend account by attaching thereto 1,173 invoices, it was reversible error to deny defendant a continuance so he could prepare his defense to meet the case presented by the invoices."

BASIS FOR MISSISSIPPI SUPREME COURT DECISION

The lower court cited the case of *Zwerg v. Zwerg,* 179 So. 2d 821, 254 Miss. 8 (1965) as a basis for its decision. When you apply the facts and law of the Zwerg case to the case at bar, it can readily be seen that they will not harmonize. The facts in the Zwerg case was that a temporary divorce was granted to become final at the expiration of a six month period.

During the six month period the parties made a reconciliation and reentered into a marriage relationship. Both parties held themselves out as man and wife. The lower court also found that the divorce decree was not a final judgment. None of these facts existed with the case at bar. The parties were finally divorced in the State of Alabama, and, therefore, were entitled to the full faith and credit of the United States Constitution.

This Court only has to read the decree of the trial court to see that the amendment to the bill of complaint was a material one and that the court based its decision on the amended portion of the bill and, therefore, it was very prejudicial to Petitioner herein by being surprised by new material being brought forth in the amended bill and then he not being given the opportunity to prepare or even set up a defense to this new allegation. Not only has Petitioner been denied the equal protection clause of the Fourteenth Amendment but has been deprived of the due process clause of said amendment.

CONCLUSION

In conclusion we urge upon this Court that we have conclusively demonstrated the following:

1) That the Chancery Court of Scott County, Mississippi erred in allowing a collateral attack upon a decree of the Circuit Court in Equity of Baldwin County, Alabama when both parties were domiciled in the State of Alabama at the time of the redention of the decree, and by refusing to accord full faith and credit pursuant to Section One of Article Four of the Constitution of the United States, and the Supreme Court of Mississippi erred in affirming the decree of the Chancery Court of Scott County, Mississippi, and

2) That the Supreme Court erred in putting the Respondent to trial without benefit of allowing an amended answer, as denied by the trial court, all of which denies Petitioner due process under Section One to the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, Petitioner prays that a writ of certiorari issue from this Court the Supreme Court of Mississippi.

Respectfully submitted,

L. PERCY QUINN
Counsel for Petitioner
P. O. Box 1085
Laurel, Mississippi 39440

CERTIFICATE OF SERVICE

I, L. Percy Quinn, Counsel for the Petitioner hereby certify that a true copy of the foregoing Petition for a Writ of Certiorari to the Supreme Court of Mississippi with attached appendices have been mailed, postage prepaid, to Hon. John McLaurin, of counsel for Respondent, at his regular Post Office Address, Brandon, Mississippi.

This the 31 day of May, 1974.

L. Percy Quinn

L. Percy Quinn

APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI

NO. 47,374

ROBERT DUVAL ROGERS

V.

MRS. MINNIE CORNELIA ROGERS, Individually AND ROBERT D. ROGERS, JR., As Conservator

ROBERTSON, Justice:

On February 16, 1972, Mrs. Minnie Cornelia Rogers, through her conservator, Robert D. Rogers, Jr. filed suit for separate maintenance against Robert Duval Rogers in the Chancery Court of Scott County. In her bill of complaint, she admitted that a divorce had been granted Rogers on July 23, 1971, by the Circuit Court of Baldwin County, Alabama, but Complainant alleged that the decree granting the divorce was void because the waiver of process signed by Mrs. Rogers on July 20, 1971, was procured through fraud, in that she was not mentally competent to sign a waiver, and that a fraud had been thus perpetrated both on her and on the Alabama Court granting the divorce.

Defendant's principal contention was that the divorce decree rendered by the Alabama Circuit Court in Equity was valid on its face, was entitled to full faith and credit under the United States Constitution, and was not subject to collateral attack in the courts of Mississippi.

After a full hearing, the Chancery Court awarded her $850.00 per month as separate maintenance, $750.00 for the services of her attorney in that Court, and attached a lien to the 1/6th mineral interest in lands in Scott County owned by defendant to secure the payment of separate maintenance. The Chancellor specifically found that the waiver of process was fraudulently obtained on July 20, 1971, when Mrs. Rogers was mentally incompetent; that this action constituted a fraud both upon Mrs. Rogers and upon the Alabama Circuit Court, and that the decree awarding Rogers a divorce was not entitled to recognition under the full faith and credit clause of the United States Constitution.

Mrs. Minnie Cornelia Rogers and Robert Duval Rogers were lawfully married in Rankin County, Mississippi, on September 18, 1927. They had four children, all of whom are adults. They lived near Morton in Scott County, Mississippi, until 1965, when they moved to Spanish Fort, Alabama, and established a residence there.

After almost forty-four years of marriage, on July 23, 1971, appellant filed a one page bill of complaint for divorce in the Equity side of the Circuit Court of Baldwin County, Alabama. He was granted a divorce on the same day.

APP. A - 3

The Answer and Waiver of Process of Mrs. Rogers was on a printed form, and the printed acknowledgment recited:

THE STATE OF ALABAMA,

BALDWIN COUNTY.

Before me ..... the undersigned authority in and for said State and County, hereby certify that MINNIE B. ROGERS, whose name is signed to the foregoing answer to a certain Bill of Complaint filed on the.....day of....., A. D. 19....., wherein ROBERT D. ROGERS is complainant and MINNIE B. ROGERS is defendant, and who is known to me to be the identical person named as defendant in the Bill of Complaint in this cause, acknowledged before me on this day that being informed of the allegations on the Bill of Complaint filed against the defendant in said cause, said defendant signed the answer hereto attached voluntarily on the day same bears date.

And I further certify that defendant signed the said answer in my presence.

Given under my hand and seal this 20th day of July, A.D., 1971.

/s/ Frankie H. Wilson
NOTARY PUBLIC

Typed on the bottom of the bill of complaint was "John V. Duck Solicitor for Complainant." The Commission to Take Depositions (also on a printed form) appointed Lucia Higbee, Commissioner, and was signed by Eunice G. Tindal as

Register of the Circuit Court of Baldwin County, Alabama. Commissioner Higbee took the oral deposition of complainant, Robert D. Rogers, in the office of John V. Duck, his solicitor. The testimony on which the decree of divorce was granted was:

> "That on that day, and on various and prior occasions before that, MINNIE B. ROGERS threatened and abused me and threatened to do me bodily harm which would necessarily endanger my life and health, and that from her conduct I was afraid that if I continued to live with her, she might do actual physical violence which would necessarily endanger my life and health."

APP. A - 4

Register Tindal, on a form styled "Note of Testimony" submitted this case to the Circuit Judge. This form recited: "This cause is submitted in behalf of Complaint upon the original Bill of Complaint, and testimony of Complainant and in behalf of Defendant upon Answer and Waiver." This printed form was signed by John V. Duck and Eunice G. Tindal.

The printed form, styled "Divorce Decree", was signed by Telfair J. Mashburn, "Judge Circuit Court, in Equity" and recited:

> "This cause coming on to be heard was submitted upon Bill of Complaint, *Answer and Waiver* and Testimony as noted by the Register, and upon consideration thereof, the Court is of the opinion that the Complainant is entitled to the relief prayed for in said bill.
>
> "It is therefore ordered, adjudged and decreed by the Court that the bonds of matrimony heretofore existing between the Complainant and Defendant be, and the same are hereby dissolved, and that the said ROBERT D. ROGERS is forever divorced from the said MINNIE B. ROGERS for and on account of CRUELTY."
>
> "It is further ordered that the Complainant and Respondent be, and they are hereby permitted to again contract marriage upon payment of the cost of this suit."

APP. A-5

Robert D. Rogers and Minnie Cornelia Rogers both continued to reside in their home in Spanish Fort, Alabama, until January 6, 1972, when Rogers brought Mrs. Rogers to Morton, Mississippi, and left her with his daughter-in-law, Mrs. Jimmy Rogers.

On December 24, 1971, Rogers gave Mrs. Rogers a Pictorial New Testament inscribed by him: "12-24-71 To my Darling Cornelia I love you so much, Duval."

On January 7, 1972, Robert D. Rogers married Sara Mercer in Livingston, Alabama.

On February 4, 1972, Robert D. Rogers, Jr. was appointed Conservator of the Estate of Mrs. Minnie Cornelia Rogers.

Dr. George Taylor testified that Mrs. Rogers was admitted to the Mississippi State Hospital on February 16, 1972, with a history of severe mental deterioration; that he was very interested in Mrs. Rogers because at one time they were neighbors for many years. He saw her daily while she was in the main receiving unit of the hospital. Dr. Taylor testified that although he was her attending physician from March 9, 1972, until she was discharged on leave on May 15, 1972, and saw her daily, that she never remembered who he was. She would put on two or three skirts and two or three blouses at one time. She put on makeup like a child playing with her mother's makeup kit. Dr. Taylor further testified:

> "She was very severly demented and certainly was not responsible for anything that she did while she was at Mississippi State Hospital."

APP. A - 6

The entire staff of the Mississippi State Hospital agreed with the diagnosis that she was suffering from "psychosis due to cerebral arteriosclerosis." Dr. Taylor explained that this is a slow progressive disease. It was his "very strong" opinion as a psychiatrist and medical doctor that she would not have been competent on July 20, 1971, to sign a waiver of process, act for herself in any way or defend herself "in a Court of law."

Dr. Bruce Sutton, a medical doctor specializing in psychiatry, examined Mrs. Rogers on August 30, 1971. Dr. Sutton testified that she was in very poor contact with reality, could not tell him much about her family or even the number of children that she had, wasn't quite sure where she was and her memory functions were very poor. Dr. Sutton was asked about her mental competency on July 20, 1971:

"A. It is my opinion that she was not capable of executing any legal instruments.

"Q. Is that on July 20, 1971?

"A. Yes, sir."

Two of her adult sons, one adult daughter, and a daughter-in-law (the wife of her invalid son) testified of many instances indicative of her complete mental incompetency and the inexorable progress of arteriosclerosis. Their testimony was positive, unequivocal and unanimous that on July 20, 1971, Mrs. Rogers was completely incompetent, would not know what she was doing, and would not comprehend the meaning of anything that she might do on that date.

APP. A - 7

The testimony of her complete mental incompetency on July 20, 1971, was so overwhelming that the Chancery Court could have reached no other conclusion but that she was mentally incapable of realizing the significance of any instrument that she might sign on that date. The chancellor was eminently correct in finding that Robert D. Rogers perpetrated a fraud both on Mrs. Rogers and on the Circuit Court of Baldwin County, Alabama.

This Court said in *Zwerg v. Zwerg*, 254 Miss. 8, 179 So. 2d 821 1965):

> "The public policy of Mississippi will not allow to stand a decree of divorce obtained by fraud, and *such decree may be attacked successfully at any time whether the basis of the attack appears on the face of the record or not.* Watts vs. Watts, 123 Miss. 812, 86 So. 353 (1920)." 254 Miss. at 15-16, 179 So. 2d at 823 (Emphasis Added).

> "As was said in the Watts case, supra, it makes no difference whether the attack of fraud is made by the original bill or by petition, or by motion. The court will look to the substance of things rather than mere procedure and *will not permit a person practicing fraud to benefit by his or her acts.*" 254 Miss. at 20, 179 So. 2d at 825.

> "In 113 Okla. at 83, 239 Pac. at 233, the Court (quoting from Young v. Young, 17 Minn. 181, Gil. 153) further stated:

> 'In an action for divorce, any course of action by plaintiff which is intended to and does *prevent the defendant from setting up and establishing a defense to the action is a fraud upon the administration of justice,* as well as upon the defendant, for which the judgment thereby procured will be set aside.'
>
> "In Burkdall v. Burkdall, 178 Okla. 392, 394, 62 P. 2d 1266, 1268 (1936), the Oklahoma court, quoting from the Wooden case, supra, said:
>
> 'Courts of general jurisdiction have inherent power, *independent of any statutory provisions,* and in divorce cases, no less than in other cases, to set aside and annul any judgment or decree *procured by fraud and deceit of the successful party, practiced upon the complaining party to the action and the court.*' (Emphasis supplied)."

254 Miss. at 17-18, 178 So. 2d at 824-825 (Emphasis added).

Finally, Rogers contends that the Chancery Court erred in overruling his motion for 30 days additional time "to answer this amendment" after Mrs. Rogers was allowed to amend her Bill of Complaint at the close of her case. The Bill of Complaint specifically charged that a fraud was perpetrated on both Mrs. Rogers and the Circuit Court of Baldwin County, Alabama. The three-line amendment, to conform the pleadings to the proof, added little, if anything, to the original specific charge of fraud. The appellant was not

taken by surprise and was not prejudiced in any way by allowing the amendment. The granting of a continuance is largely a matter within the sound discretion of the court. Unless manifest injustice appears to have resulted from a denial, this Court will not reverse. No such injustice resulted here.

The decree of the Chancery Court is affirmed.

The motion for an additionanl attorney's fee for representation in this Court is sustained. In line with our usual custom, the attorney's fee for representation in this Court is fixed at one-half of the fee allowed in the lower court, which one-half would be $375.00.

AFFIRMED, AND AN ADDITIONAL ATTORNEY'S FEE OF $375.00 ALLOWED.

RODGERS, P. J., PATTERSON, SMITH and SUGG, JJ., CONCUR.

APPENDIX B

IN THE SUPREME COURT OF MISSISSIPPI

MONDAY, FEBRUARY 18, 1974, COURT SITTING : : :

ROBERT DUVAL ROGERS

No. 47,374 VS.

MRS. MINNIE CORNELIA ROGERS, ET AL

This cause having been submitted at a former day of this Term on the record herein from the Chancery Court of Scott County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 12th day of September, 1972-be and the same is hereby affirmed with damages at the rate of 5 per centum as allowed by statute on the sum total judgment in the Court below. It is further ordered and adjudged and decreed that the appellees are allowed the further sum of $375.00 as an additional attorney's fee on appeal and all of the costs of this appeal to be taxed for which let proper process issue.

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APPENDIX C

IN THE CHANCERY COURT
OF SCOTT COUNTY, MISSISSIPPI

MRS. MINNIE CORNELIA ROGERS, ET AL
Complainants

VS. NO. 9707

ROBERT DUVAL ROGERS, ET AL
Defendants

FINAL DECREE

This day this Cause came on for hearing on Bill of Complaint of Mrs. Minnie Cornelia Rogers and Robert D. Rogers, Jr., Conservator of the Person and Estate of Mrs. Minnie Cornelia Rogers, Writ of Attachment upon the lands of Robert Duval Rogers situated in Scott County, Mississippi, together with all statutory requirements for perfecting an Attachment in Chancery, personal service of process upon Robert Duval Rogers and Answer of Defendant, Robert Duval Rogers, and the Court having heard both oral and documentary proof and being satisfied that it has jurisdiction of both parties and the subject matter finds, as follows:

1. That Mrs. Minnie Cornelia Rogers is mentally incompetent and that Robert D. Rogers, Jr. is the duly qualified, appointed, and acting conservator of the Person and Estate of Mrs. Minnie Cornelia Rogers. That the Final Decree of Divorce rendered in the Circuit Court of Baldwin County,

Alabama on July 23, 1971, entitled "Robert D. Rogers vs. Minnie B. Rogers" was procured upon a Waiver of Process which was fraudulently obtained on July 20, 1971, when the said Minnie B. Rogers, being the same person as Mrs. Minnie Cornelia Rogers was mentally incompetent and that said action constitutes a fraud upon the said Mrs. Minnie B. Rogers and the Circuit Court of Baldwin County, Alabama and that said Decree is not entitled to recognition under the full faith and credit clause of the Constitution of the United States in the Courts in the State of Mississippi.

2. That Mrs. Minnie Cornelia Rogers should be paid separate maintenance by Defendant, Robert Duval Rogers, and that Defendant, Robert Duval Rogers should pay unto Robert D. Rogers, Jr., the sum of Eight Hundred Fifty and No/100 Dollars ($850.00) per month as such separate maintenance together with any unusual hospital and surgery expenses incurred by Mrs. Minnie Cornelia Rogers. That the said monthly payments should be paid in two semi-monthly installments of $425.00 each, the first such installment becoming due on September 15, 1972, a like installment on October 1, 1972, and thereafter installments of $425.00 on the 15th and 1st of each successive month thereafter.

3. That Mrs. Minnie Cornelia Rogers is entitled to an attorney fee of $750.00 for the services of her attorneys in this Cause and that Defendant, Robert Duval Rogers, should pay unto Robert D. Rogers, Jr., Conservator of the Person and Estate of Mrs. Minnie Cornelia Rogers, the sum of $750.00 as such attorney fee on or before November 1, 1972.

APP. C-3

4. That Defendant, Robert Duval Rogers, is the owner of an undivided one-sixth (1/6th mineral interest in and to the following described property situated in Scott County, Mississippi, to-wit:

SW ¼ and NW ¼, Section 2; S ½ of SW ¼ and NE ¼ of SE ¼, Section 3; N ½ of NW ¼, Section 10; all in Township 5 North, Range 6 East; E ½ of SE ¼, Section 3; N ½ of NE ¼, Section 9; all in Township 5 North, Range 6 East; S ½ of SE ¼, NW ¼ of SE ¼ and W ½ of SE ¼ of SW ¼, Section 4, Township 5 North, Range 6 East; W ½ of NW ¼, Section 3, Township 5 North, Range 6 East; W½ of NW ¼, Section 3, Township 5 North, Range 6 East; NW ¼ of SE ¼, SW ¼ of NE ¼ of NE ¼ and SE ¼ of NW ¼, less 1 acre out of NW corner, Section 9, Township 5 North, Range 6 East; W ½ of NE ¼, W ½ of SE ¼, E ½ of NW ¼, SW ¼ or NW ¼, S ¼ of SW ¼, and the South 5 acres of the NW ¼ of NW ¼, Section 5, Township 5 North, Range 6 East; NE ¼, of NE ¼, SW ¼ of NE ¼ and E ½ of SE ¼, Section 8; S ½ of SE ¼, lying west of Old Ridge Road, as it runs from William Merchant residence to Morton, Mississipp, except a 2 acre lot 70 yards wide and 140 yards long, commencing in front of S. M. Stuart's old residence, and running along old Ridge Road, and NE ¼ of SW ¼ and NW ¼ of NW ¼, less a 2 acre cemetery on North end of NW ¼ of NW ¼, Section 9, all in Township 5 North, Range 6 East; E ½ of SE ¼, E ½ of SW ¼, and SW ¼ of SW ¼, Section 3, Township 5 North, Range 6 East; Lot 6, containing 58.55 acres in S ½ of NE ¼; Lot 7, containing 50.60 acres in N ½ of SE ¼; Lot 8, containing 42.78 acres in S ½ of SE ¼; all in Section 6, Township 5 North, Range 6 East; N ½ of NW¼ of

NW ¼, Section 8; SE ¼ of SE ¼, Section 21; SW ¼ of SW ¼, Section 22; W ½ of NW ¼, Section 27; NW ¼ of NW ¼ and NE ¼ of NE ¼, Section 28; all in Township 5 North, Range 6 East; a 3 acre tract in SW corner of NW ¼ of SW ¼, Section 14; SE ¼ of NE ¼, Section 21; all in Township 5 North, Range 6 East; Start at the NE corner of SW ¼ of SE ¼, run west 407 feet, run south 53 degrees West 232 feet to point of beginning, being on the East line of the road leading from Morton and Brandon Road to Rogers Ice Plant, run south 53 degrees west along the east line of said road 200 feet, run south 37 degrees east 200 feet, run north 53 degrees east 200 feet, run North 37 degrees west 200 feet to the point of beginning, Section 27, Township 6 North, Range 6 East; S ½ of SE ¼, NW ¼ SE¼, N ½ of SW ¼, less a 3 acre tract in SW corner, and the SW ¼ of NW ¼, less a 4 acre tract of the NW corner, being 233 acres, Section 14, Township 6 North, Range 6 East; NW ¼ of NE ¼ and W ½ of NW ¼, less 8 acres in NW corner, Section 27; NE ¼ and N ½ of SE ¼, less 10 acres on south side of NW ¼ of SE ¼ and less 3.5 acres in SW corner of NE ¼ of SE ¼, Section 28, all in Township 6 North Range 6 East; NE ¼ of SW ¼, Section 3; S ½ of NE ¼, E ½ of NE ¼ of NE ¼, NW ¼ of NE ¼, less 4 acres in NE corner, Section 4, all in Township 5 North, Range 6 East; NW ¼ of SE ¼ and N ½ of SW ¼ and SW ¼ of NW ¼, less 4 acres in NW corner of SW ¼ of NW ¼, Section 14, Township 5 North, Range 6 East.

That a lien should attach to the said mineral interest in said lands to secure the payment of the separate maintenance and attorney's fees awarded herein.

APP. C-4

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that: (A) Defendant, Robert Duval Rogers, is hereby ordered to pay unto Robert D. Rogers, Jr., the sum $850.00 per month as separate maintenance for Mrs. Minnie Cornelia Rogers, said sum to be payable in semi-monthly installments of $425.00 each, in first such payment in the sum of $425.00 to be made on September 15, 1972, and a like payment of $425.00 to be made on the 1st and 15th day of each successive month thereafter, and Defendant is ordered to pay unto said Conservator any unusual hospital and surgery expenses incurred by Mrs. Minnie Cornelia Rogers; (B) Defendant, Robert Duval Rogers is ordered to pay unto Robert D. Rogers, Jr., Conservator of the Person and Estate of Mrs. Minnie Cornelia Rogers, the sum of $750.00 for services of her attorneys in this Cause on or before November 1, 1972; (C) a lien is hereby attached to the one-sixth mineral interset owned by Robert Duval Rogers in and to the lands in Scott County, Mississippi, described hereinabove to secure the said separate maintenance and attorney's fees awarded herein and execution shall issue upon his failure so to do; and (D) all costs of this Court are assessed against Robert Duval Rogers, Defendant, for which let execution issue.

ORDERED, ADJUDGED AND DECREED this 12th day of September, 1972.

/s/ L. B. Porter
Chancellor

FILED
CHANCERY COURT
SCOTT COUNTY MISSISSIPPI
SEPT. 13, 1972
EARL WEBB
CHANCERY CLERK
NN 317-320

APPENDIX CC

IN THE SUPREME COURT OF MISSISSIPPI

MONDAY, MARCH 18, 1974, COURT SITTING : : : : :

ROBERT DUVAL ROGERS

VS. NO. 47,374

MRS. MINNIE CORNELIA ROGERS, ET AL

This cause this day came on to be heard on the petition for a rehearing filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be denied doth order and adjudge that said petition be and the same is hereby denied.

MINUTE BOOK "BQ" PAGE 396

I, Mrs. Julia H. Kendrick, Clerk of the Supreme Court of the State of Mississippi, do hereby certify that the foregoing is a true and correct copy of the judgment rendered by the Court in the cause therein stated, as the same appears of record on file in my office.

Given under my hand, with the seal of said Court affixed, at office, in the City of Jackson, Miss., this the 23rd day of April A. D., 1974.

JULIA H. KENDRICK
Clerk Supreme Court

APPDENDIX D-1

ROBERT D. ROGERS, Complainant, Vs. MINNIE B. ROGERS, Respondent.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALA. IN EQUITY 11,832

TO THE HONORABLE TELFAIR J. MASHBURN, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY:

Comes now your Complainant, and respectfully shows unto your Honor and this Honorable Court as follows:

I.

That your Complainant is over the age of twenty-one years and a resident citizen of the State of Alabama; that the Respondent, MINNIE B. ROGERS, is over the age of twenty-one years and is a resident citizen of the State of Alabama;

II.

That your Complainant and the Respondent were lawfully married on, to-wit: the 18th day of September, 1927 in Brandon, Mississippi and lived together as husband and wife until on, to-wit: the 19th day of July, 1971.

III.

That on, to-wit; the 19th day of July, 1971 and on various and prior occasions thereto, the Respondent threatened and abused your Complainant and threatened to do him bodily harm which would necessarily endanger his life and

health, and that from the conduct of the Respondent your Complainant feared that if he continued to live with her as her husband, she might do actual physical violence to his person which would necessarily endanger his life and health.

IV.

That there was born to this marriage, four children, all of which said children are now grown and self-supporting.

WHEREFORE, the premises considered, your Complainant prays that your Honor will make the said MINNIE B. ROGERS Party Respondent to this Bill of Complaint and require her to appear and plead, answer or demur within the time prescribed by law and the rules of this Honorable Court.

APP. D-2

Your Complainant further prays that upon a final hearing of this cause, your Honor will enter a decree forever barring the bonds of matrimony now existing between your Complainant and the Respondent and allow him the right to remarry should he so desire.

Your Complainant prays for such other, further and different relief as he may be in Equity entitled to receive.

ROBERT D. ROGERS

JOHN V. DUCK
SOLICITOR FOR COMPLAINANT

FILED
JULY 23, 1971
EUNICE G. TINDAL, REGISTER
BALDWIN CO., ALA.

APP. E

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, IN EQUITY
BAY MINETTE, ALABAMA

ROBERT D. ROGERS

VS.

MINNIE B. ROGERS

Comes MINNIE B. ROGERS, the person named as defendant in this cause, and for answer to the bill herein denies each and every allegation therein, and demands strict proof of the same. Defendant also waives service by the Sheriff of subpoena on said bill, a copy of the interrogatories filed in the cause, notice of the filing of them, waives the ten days allowed by law to cross them, the right to cross them, and consents that testimony may be taken, and the cause be submitted to Judge for final decree without notice to this defendant.

Minnie B. Rogers, Defendant.

THE STATE OF ALABAMA,
BALDWIN COUNTY.

Before me ..... the undersigned authority in and for said State and County, hereby certify that MINNE B. ROGERS whose name is signed to the foregoing answer to a certain Bill of Complaint filed on the .....day of....., A. D. 19....., wherein ROBERT D. ROGERS is complainant and MINNIE B. ROGERS is defendant, and who is known to me to be the identical person named as defendant in the Bill of Complaint in this cause, acknowledged before me on this day that being informed of the allegations on the Bill of Complaint filed against the defendant in said cause, said defendant signed the answer hereto attached voluntarily on the day same bears date.

And I further certify that defendant signed the said answer in my presence.

Given under my hand and seal this 20th day of July, A. D. 1971.

Frankie H. Wilson
Notary Public

FILED
JULY 23, 1971
EUNICE G. TINDAL, REGISTER
BALDWIN CO., ALA.

APP. F-1

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, IN EQUITY

ROBERT D. ROGERS, Complainant

VS.

MINNIE B. ROGERS, Respondent

This cause coming on to be heard was submitted upon Bill of Complaint, Answer and Waiver and Testimony as noted by the Register, and upon consideration thereof, the Court is of the opinion that the Complainant is entitled to the relief prayed for in said bill.

It is therefore ordered, adjudged and decreed by the Court that the bonds of matrimony heretofore existing between the Complainant and Defendant be, and the same are hereby dissolved, and that the said ROBERT D. ROGERS is forever divorced from the said MINNIE B. ROGERS for and on account of CRUELTY.

It is further ordered, adjudged and decreed that neither party to this suit shall again marry except to each other until sixty days after the rendition of this decree, and that if appeal is taken within sixty days, neither party shall marry except to each other during the pendency of said appeal.

It is further ordered that the Complainant and Respondent be, and they are hereby permitted to again contract marriage upon payment of the cost of this suit.

It is further ordered that ROBERT D. ROGERS the Complainant pay the cost herein to be taxed, for which executed may issue.

This 23rd day of July, 1971.

Telfair J. Mashburn
Judge Circuit Court, In Equity

I, ..., Register of the Circuit Court of Baldwin County, Alabama, do hereby certify that the foregoing is a correct copy of the original decree, rendered by the Judge of the Circuit Court in the above stated cause, which said decree is on file and enrolled in my office.

Witness my hand and seal this the.....day of....., 19.....

.....
Register of Circuit Court, In Equity

APP. F-2

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY

CIRCUIT COURT OF BALDWIN COUNTY

ROBERT D. ROGERS

VS.

MINNIE B. ROGERS

This cause is submitted in behalf of Complaint upon the original Bill of Complaint, and testimony of Complainant and in behalf of Defendant upon Answer and Waiver.

Eunice G. Tindal,
Register.

APP. F-3

STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

TO LUCIA HIGBEE

KNOW YE: That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, as such time and place as you may appoint, to call before you and examine ROBERT D. ROGERS a witness in behalf of ROBERT D. ROGERS in a cause pending in our Circuit Court in Baldwin County, of said State, wherein ROBERT D. ROGERS is, Complainant and MINNIE B. ROGERS is Respondent on oath, to be by you administered, upon ROBERT D. ROGERS to take and certify the deposition of the witness and return the same to our Court, with all convenient speed, under your hand.

Witness 22nd day of July, 1971.

Eunice G. Tindal,
Register

APP. F - 4

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

(IN EQUITY)

ROBERT D. ROGERS, COMPLAINANT

MINNIE B. ROGERS, RESPONDENT

I, Lucia Higbee, as Register and Commissioner have called and caused to come before me ROBERT D. ROGERS witnesses named in the Requirement for Oral Examination, on the 22nd day of July 1971, at the office of JOHN V. DUCK in Fairhope, Alabama, and having first sworn said Witnesses to speak the truth, the whole truth, and nothing but the truth, the said ROBERT D. ROGERS both depose and say as follows:

TESTIMONY OF ROBERT D. ROGERS

My name is ROBERT D. ROGERS. I am over 21 years of age and a resident citizen of the State of Alabama. MINNIE B. ROGERS is over the age of 21 years and is a resident citizen of the State of Alabama.

We were married in Brandon, Mississippi on or about the 18th day of September, 1927 and lived together as husband and wife until on or about the 19th day of July, 1971.

That on that day, and on various and prior occasions before that, MINNIE B. ROGERS threatened and abused me and threatened to do me bodily harm which would necessarily endanger my life and health, and that from her conduct I was afraid that if I continued to live with her, she might do actual physical violence which would necessarily endanger my life and health.

That we have four children born as a result of this marriage, but all of them are thirty years or older and are self-supporting.

ROBERT D. ROGERS

FILED
JULY 23, 1971
EUNICE G. TINDAL, REGISTER
BALDWIN CO., ALA.

APP. F-5

I, Lucia Higbee, as Register and Commissioner hereby certify that the foregoing deposition.....on Oral Examination was taken down by me in writing in the words of the witness and read over to him and he signed the same in the presence of myself at the time and place herein mentioned; that I have personal knowledge of personal identify of said witness or had proof made before me of the indentify of said witness; that I am not of counsel or of kin to any of the parties to said cause or any manner interested in the result thereof.

I enclose the said Oral Examination in an envelope to the Register of said Court.

Given under my hand and seal, this 22nd day of July, 1971.

Lucia Higbee (L. S.)

APP. F-6

I, Eunice G. Tindal, Register of the Circuit Court of Baldwin County, Alabama, do hereby certify that the foregoing is a correct copy of the original file, number 11,832, in the case of Robert D. Rogers, Complainant, Vs. Minnie B. Rogers, Respondent.

Witness my hand and seal this the 10th day of April, 1972.

Eunice G. Tindal,
Register of Circuit Court, In Equity

I, Telfair J. Mashburn, as Judge of the 28th Judicial Circuit of Alabama, do hereby certify that Eunice G. Tindal, whose name as signed to the above and foregoing certificate, is the duly appointed, qualified and serving Register of the Circuit Court, in Equity of Baldwin County, Alabama.

Witness my hand this 10th day of April, 1972.

Telfair J. Mashburn,
Judge of the 28th Judicial Circuit
of Alabama.

I, Eunice G. Tindal, as Register of the Circuit Court of Baldwin County, Alabama, do hereby certify that Telfair J. Mashburn, whose name is signed to the above and foregoing certificate, is the duly elected Judge of the 28th Judicial Circuit of Alabama.

Witness my hand and seal this 10th day of April, 1972.

Eunice G. Tindal,
Register, Circuit Court In Equity
Baldwin County, Alabama

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JUL 15 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1854

ROBERT DUVAL ROGERS,
Petitioner,

vs.

MRS. MINNIE CORNELIA ROGERS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSISSIPPI

BRIEF FOR RESPONDENT IN OPPOSITION

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July 12, 1974

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. _____

ROBERT DUVAL ROGERS,
Petitioner,

vs.

MRS. MINNIE CORNELIA ROGERS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSISSIPPI

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of The Supreme Court of Mississippi in *Rogers* v. *Rogers, et al.* (App. A of Petition), is reported at 290 So. 2d 631. A petition for rehearing was denied on 18 March, 1974.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this court pursuant to the provisions of 28 U.S.C. 1257 (3). Respondent concedes that a final judgment was entered by the highest court of Mississippi. Respondent denies, however, that a substantial federal question is presented.

QUESTION PRESENTED

Whether, in view of the affirmative constitutional duty imposed by the Full Faith and Credit Clause and related statutory provisions, a Mississippi court may review the jurisdictional basis of a decree entered by an Alabama court and, upon a factual finding of conscious fraud, refuse to acknowledge the import of the Alabama decree.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States, Article IV, Section 1 provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Title 28, U.S.C. §1738 provides:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certifi-

cate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT

This is a domestic relations case. After a review of the complete record, the Supreme Court of Mississippi concurred without reservation in the chancellor's express factual determination that the petitioner, in order to obtain a divorce from an aging wife who was suffering a rapid mental deterioration, perpetrated a conscious fraud on the Circuit Court of Baldwin County, Alabama. The key factual determination centered on the court's finding that the respondent was wholly without sufficient mental capacity to execute a valid waiver of process and entry of appearance. The opinion of the Supreme Court of Mississippi (App. A of Petition), reported at 290 So. 2d 631, adequately details the factual background.

After obtaining a divorce decree, the petitioner left his wife at the home of their invalid son, returned to Alabama, and married another woman. The Mississippi court, after a full presentation of the facts, refused to recognize the decree procured by fraud and ordered petitioner to pay separate maintenance to the respondent, who was subsequently confined to the Mississippi State (Mental) Hospital. Petitioner contends the Mississippi court was required to accept the import of the Alabama decree on its face.

ARGUMENT

Petitioner's argument is focused on his contention that the Supreme Court of Mississippi either failed to apply or incorrectly applied controlling decisions of this court. Petitioner is manifestly incorrect. The principal case relied on by the petitioner, *Haddock* v. *Haddock*, 201 U. S. 562 (1906), was expressly overruled in *Williams* v. *North Carolina*, 317 U. S. 287 (1942) (Williams I).

This is a domestic relations case. The record presents facts which are uniquely narrow. The decision below affects only the members of an isolated and unfortunate family. Clearly, there is no element of significant public interest at stake.

Moreover, no substantial issue of federal constitutional or statutory construction is posed which would warrant review on certiorari. The decision below correctly applies principles previously approved by this court.

I. The Decision Below Is Clearly Correct.

This case is controlled by the principles announced in *Williams* v. *North Carolina*, 325 U. S. 226 (1945) (Williams II) and subsequent cases involving recognition of foreign divorce decrees. The efficacy of the Alabama divorce in Mississippi is the decisive question.

The Full Faith and Credit Clause requires a Mississippi court to accord prima facie validity to the Alabama decree. *Esenwein* v. *Pennsylvania*, 325 U. S. 279 (1945). A judgment which, on its face, appears regular and valid is entitled to a presumption that the court which entered the decree had acquired jurisdiction over the parties and subject matter. *Cook* v. *Cook*, 342 U. S. 126 (1951). The

Mississippi court satisfied the reciprocal duty of respect owed to the Alabama adjudication. The Mississippi court refused to recognize the decree only after a full presentation of the underlying jurisdictional facts.

The existence vel non of facts sufficient to confer jurisdiction is a matter to be resolved by judicial determination. If a specific finding of jurisdiction, amply supported in the record, has been made by the adjudicating court, then the matter is not subject to relitigation by collateral attack in the courts of a sister state. *Sherrer* v. *Sherrer*, 334 U. S. 343 (1947). In this case, however, the Alabama Court made no inquiry into the facts underlying the purported waiver of process and entry of appearance. Therefore, in the face of an appropriate challenge to the decree, the Mississippi court was required to examine the jurisdictional facts. *Williams* v. *North Carolina*, 325 U. S. 226 (1945) (Williams II). If the Alabama court did not have jurisdiction, or if apparent jurisdiction was obtained through fraud, then the court had no power to extinguish any rights the respondent had. *Vanderbilt* v. *Vanderbilt*, 354 U. S. 416 (1957); *Estin* v. *Estin*, 334 U. S. 541 (1948).

After trying the issue, the chancellor determined that the divorce decree "was procured upon a Waiver of Process which was fraudulently obtained on July 20, 1971 when the said Minnie B. Rogers . . . was mentally incompetent and that said action constitutes a fraud upon the said Mrs. Minnie B. Rogers and the Circuit Court of Baldwin County, Alabama and that said Decree is not entitled to recognition under the full faith and credit clause of the Constitution of the United States in the Courts in the State of Mississippi." (App. C-2 of Petition). The Supreme Court of Mississippi concurred in the chancellor's finding of fact.

The determination of this issue of jurisdictional fact was within the province of the Mississippi court. *Williams II, supra.* The issue was fairly determined by appropriate procedure. The findings are amply supported by the evidence, and this court will not retry the facts. *Rice* v. *Rice,* 336 U. S. 674 (1949).

II. There Is No Important Question of Federal Law.

The principles of constitutional construction applicable to this litigation have been well-settled for almost thirty years. This case certainly presents no novel or significant issue which would require the attention and deliberation of this tribunal.

The precise issue in this case was resolved in *Williams* v. *North Carolina,* 325 U. S. 226 (1945) (Williams II). The state court, therefore, did not decide a previously unresolved federal question of substance. See, Supreme Court Rule 19. The state court had ample authority to inquire into the jurisdictional basis of the decree. The decision of the state court, therefore, is in complete accord with the applicable decisions of this court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied

Respectfully submitted,

BERNARD W. N. CHILL
Counsel for Respondent

July 12, 1974

CERTIFICATE OF SERVICE

I, Bernard W. N. Chill, Counsel for Respondent, hereby certify that a true copy of the foregoing Brief for Respondent in Opposition has been mailed, postage prepaid, to Honorable L. Percy Quinn, Counsel for Petitioner, Post Office Box 1085, Laurel, Mississippi 39440.

This the 12th day of July, 1974.

BERNARD W. N. CHILL

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Supreme Court, U. S.
FILED
SEP 18 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1854

ROBERT DUVAL ROGERS,
Petitioner,

vs.

MRS. MINNIE CORNELIA ROGERS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSISSIPPI

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1973

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ROBERT DUVAL ROGERS,
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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSISSIPPI

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

ARGUMENT

After a careful study of *Haddock* v. *Haddock*, 201 U. S. 562, 50 L. Ed. 867, 26 S. Ct. 525 and *Williams* v. *North Carolina*, 317 U. S. 287, 87 L. Ed. 279, Petitioner finds that *Haddock, supra*, was not overruled in its entirety as claimed by Respondent. This Court held in the *Williams* case, *supra*, that the full faith and credit clause of the Federal Constitution requires extraterritorial recognition of the validity of a divorce decree obtained in accordance with the requirements of procedural due process in a state by a spouse who, under the law of such state, had acquired a bona fide domicile there, although the spouse who remained in the state of matrimonial domicile did not appear in the divorce

suit and was not served with process in the state in which the divorce was granted.

Mr. Justice Douglas delivering the opinion of the Court in *Williams, supra*, at page 290, 87 L. Ed. said:

> ". . . There is but one respect in which this Court can, within its traditional authority and professional competence, contribute uniformity to the law of marriage and divorce, and that is to enforce respect for the judgment of a state by its sister states when the judgment was rendered in accordance with settled procedural standards. As the Court's opinion shows, it is clearly settled that if a judgment is binding in the state where it was rendered, it is equally binding in every other state. This rule of law was not created by the federal courts. It comes from the Constitution and the Act of May 26, 1790, c. 11, 1 Stat at L 122, 28 USCA 687. Congress has not exercised its power under the Full Faith and Credit Clause to meet the special problems raised by divorce decrees. There will be time enough to consider the scope of its power in this regard when Congress chooses to exercise it. . . ."

Undisputed Facts

The parties herein were bona fide residents of the State of Alabama and domiciled in Baldwin County, and had been for approximately six years prior to the filing of the petition for divorce.

In *Williams* v. *North Carolina*, 325 U. S. 226, 89 L. Ed. 1577 (1945) Mr. Justice Murphy in a concurring opinion at page 1587, 89 L. Ed. wrote:

> "While I join in the opinion of the Court, certain considerations compel me to state more fully my views on the important issues presented by this case.

The State of Nevada has unquestioned authority, consistent with procedural due process, to grant divorces on whatever basis it sees fit to all who meet its statutory requirements. It is entitled, moreover, to give to its divorce decrees absolute and binding finality within the confines of its borders.

But if Nevada's divorce decrees are to be accorded full faith and credit in the courts of her sister states it is essential that Nevada have proper jurisdiction over the divorce proceedings. This means that at least one of the parties to each ex parte proceeding must have a bona fide domicil within Nevada for whatever length of time Nevada may prescribe.

*(240)

*This elementary principle has been reiterated by this Court many times. In *Bell* v. *Bell*, 181 US 175, 45 L ed 804, 21 S Ct 551, this Court held that 'because neither party had a domicil in Pennsylvania', the Pennsylvania court had no jurisdiction to grant a divorce and its decree 'was entitled to no faith and credit in New York or in any other state.' The same rule was applied in the companion case of *Streitwolf* v. *Streitwolf*, 181 US 179, 45 L ed 807, 21 S Ct 553. Referring to these two prior cases as holding that 'domicil was in any event the inherent element upon which the jurisdiction must rest,' the Court in *Andrews* v. *Andrews*, 188 US 14, 47 L ed 366, 23 S Ct 237, repeated that bona fide domicil in a state is 'essential to give jurisdiction to the courts of such state to render a decree of divorce which would have extraterritorial effect.' The Andrews Case made it clear, moreover, that this requirement of domicil is not merely a matter of state law. It was stated specifically that 'without reference to the statute of South Dakota and in any event' domicil in South Dakota was

necessary. 188 US at 41, 47 L ed 373, 23 S Ct 237. All of the opinions in *Haddock* v. *Haddock*, 201 US 562, 50 L ed 867, 26 S Ct 525, 5 Ann Cas 1, recognized this principle, with Mr. Justice Brown's dissenting opinion stating that 'the courts of one state may not grant a divorce against an absent defendant to any person who has not acquired a bona fide domicil in that state.' Finally, in *Williams* v. *North Carolina*, 317 US 287, 87 L ed 279, 63 S Ct 207, 143 ALR 1273, the Court acknowledged that the plaintiff's domicil in a state 'is recognized in the Haddock Case and elsewhere (Beale, Conflict of Laws, § 110.1) as essential in order to give the court jurisdiction which will entitle the divorce decree to extraterritorial effect, at least when the defendant has neither been personally served nor entered an appearance.' See also *Atherton* v. *Atherton*, 181 US 155, 45 L ed 794, 21 S Ct 544. . . ."

Petitioner is unable to find where the other authorities cited by Respondent have any bearing in this case. In the case involved, both parties were bona fide residents of Baldwin County, Alabama, and had been for several years prior thereto.

CONCLUSION

Wherefore, Petitioner prays that a Writ of Certiorari issue to the Supreme Court of Mississippi.

Respectfully submitted,

L. PERCY QUINN
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, L. Percy Quinn, Counsel for Petitioner, hereby certify that a true copy of the foregoing Reply Brief to Respondent's Brief in Opposition has been mailed, postage prepaid, to Honorable Bernard W. N. Chill, 1702 Deposit Guaranty National Bank Building, Jackson, Mississippi, and McLaurin & Nicols, 200 Felicity Street, Brandon, Mississippi 39042.

This 12th day of September, 1974.

L. PERCY QUINN